

6474

CONDITIONAL SALE AGREEMENT

RECORDATION NO. _____ Filed & Recorded

JAN 27 1972 -11 25 AM

BETWEEN

INTERSTATE COMMERCE COMMISSION

HARRIS TRUST AND SAVINGS BANK

AND

CHICAGO AND NORTH WESTERN RAILWAY
COMPANY

Dated as of January 20, 1972

THIS AGREEMENT, dated as of January 20, 1972, by and between
HARRIS TRUST AND SAVINGS BANK, a corporation duly organized
and existing under the laws of the State of Illinois (here-
inafter sometimes called the "Seller") party of the first part
and CHICAGO AND NORTH WESTERN RAILWAY COMPANY,
a corporation organized under the laws of the State of Wisconsin
(hereinafter sometimes called the "Buyer"), party of the
second part,

Witnesseth:

In consideration of the mutual promises of the parties hereto
hereinafter set forth, the parties hereto agree as follows:

1. Sale and Delivery of Equipment.

The Seller is to acquire units of equipment hereinbelow de-
scribed, and upon the acquisition thereof, agrees to sell and
deliver to the Buyer, and the Buyer hereby agrees to buy from
the Seller, waiving any warranty of fitness or merchantability,
and to accept delivery thereof at the times and places herein-
after specified, eighteen used diesel locomotives identified
in Schedule A attached hereto and made a part hereof (hereinafter
referred to as the "Equipment"),

2. Amount and Terms of Payment of Purchase Price.

The agreed purchase price of the Equipment is \$613,000 which
the Buyer unconditionally agrees to pay.

Said Purchase Price, together with interest thereon as provided herein, shall be payable by the Buyer to the Seller at the office of Harris Trust and Savings Bank, Chicago, Illinois, or elsewhere as may be agreed upon, as follows:

Forthwith upon delivery and acceptance of the Equipment or any portion thereof, the Buyer shall make, on the Closing Date (as hereinafter defined) with respect to each Group (as hereinafter defined), a down payment to the Seller of an amount equal to not less than twenty percent (20%) of said purchase price of the Equipment in such Group so delivered and accepted and the balance of said purchase price shall be payable in twenty-four (24) equal quarterly installments on January 15, April 15, July 15 and October 15 of each year (such dates being hereinafter called the "Payment Dates") commencing on April 15, 1972 and ending on January 15, 1978 with interest (computed on the basis of a year of 360 days and actual days elapsed) payable on the unpaid balance of said purchase price on the Payment Date at the rate of $5\frac{3}{4}\%$ per annum from the first Closing Date to the first Payment Date and thereafter for each period ending on each subsequent Payment Date at the rate per annum determined by adding $\frac{3}{4}$ of 1% to the prime commercial rate of the Seller prevailing on the first business day next following the immediately preceding Payment Date.

In case the actual cost of the Equipment does not amount to the said purchase price, then the difference shall be excluded from this Conditional Sale Agreement.

Notwithstanding the provisions of the immediately preceding paragraphs, the Buyer shall not be obligated hereunder to accept and pay for any Equipment not delivered and accepted on or before April 15, 1972, and any Equipment not so delivered and accepted shall be excluded from this Conditional Sale Agreement and shall not be included in the term "Equipment" as used herein.

The term "Closing Date" with respect to a Group (being the Equipment settled for on each Closing Date [not less than three engines] and hereinafter called a "Group") for which settlement is to be made, shall mean such date, notified to the Seller by the Buyer by at least three business days written notice, that the Equipment is to be delivered by the Manufacturer at Mt. Vernon, Illinois and that the Manufacturer's invoice for such Group has been received by the Buyer or Seller, which date shall not be later than April 15, 1972.

All overdue installments of said purchase price shall bear interest at the rate of 7% per annum.

All payments provided for in this agreement shall be made by the Buyer in lawful money of the United States.

Buyer agrees that the rights of the Seller to the entire unpaid portion of the purchase price of said Equipment and interest thereon, as well as any other rights hereunder, shall be absolute and unconditional and shall not be subject to any abatement whatsoever, or to any decrease, setoff, counterclaim or recoupment whatsoever by reason of any damage or loss or destruction of the Equipment, or by reason of any defect in or failure of title of the Seller to the Equipment or any interruption from whatsoever cause in the use, operation or possession of any Equipment or for any other reason.

3. Delivery

The delivery of each unit of the Equipment shall be made to the Buyer at the plant of the Precision National Corporation, Mt. Vernon, Illinois (hereinafter called the "Manufacturer"), unless the Buyer shall specify some other place of delivery, in which event the Buyer shall bear the entire cost as well as the risk of the transportation of such Equipment to such other point of delivery. Each unit of said Equipment shall be delivered to the Buyer who agrees that it will not accept delivery of any unit of such Equipment until:

- a. A bill of sale covering such unit shall have been delivered by the Manufacturer to the Seller;
- and
- b. The numbering and marking required by provision of Section 5 hereof shall have been affixed to each side of such unit.

Upon delivery of each of the units of the Equipment, the Buyer shall furnish to the Seller a certificate executed in duplicate by the duly appointed agent of the Buyer stating that the equipment described in such certificate has been delivered to and fully and finally accepted on the Buyer's behalf by such agent.

4. Prepayment Privilege.

The Buyer shall have the privilege of prepaying upon the date when the payment of any installment of purchase price is due hereunder, an amount equal to the last one or more maturing installment or installments thereof, together with accrued interest thereon to the date of such prepayment, and all such prepayments shall be applied toward the prepayment of the last maturing principal installment or installments due hereunder; provided, however, that the Buyer shall not be entitled to obtain the transfer of title to any part of the Equipment until the entire purchase price, together with interest thereon, has been paid in full.

5. Title to the Equipment.

The Seller shall, and hereby does, retain the full legal title to, and property in, any and all of said Equipment until the Buyer shall have made all of the payments and shall have kept and performed all of the covenants in this agreement provided to be made, kept and performed by the Buyer, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Buyer as herein provided.

The Buyer covenants and agrees that it will cause each unit of the Equipment to be kept numbered with the proper road numbers, and to be kept plainly marked, on both sides of each such unit with the name of the Seller, or of the Seller's assignee or assignees, as the case may be, followed by the word "Owner", or other appropriate words designated by the Seller.

In the event that the Equipment, or any unit thereof, shall be lost or destroyed from any cause whatsoever during the continuance of this agreement, the Buyer shall promptly and fully inform the Seller in regard thereto and shall pay to the Seller on the next succeeding April 15, a sum equal to the unpaid balance of the purchase price due on such Equipment and the Seller shall thereupon cease to have any interest in any material salvageable from such Equipment. Any money so paid to the Seller shall, as the Buyer may direct in a written instrument filed with the Seller, be applied, in whole or in part, to prepay indebtedness in respect of the purchase price of the Equipment hereunder or to or toward the cost of a unit or units of new or used standard gauge railroad rolling stock (other than passenger or work equipment) to replace such Equipment lost or destroyed. In case any such money shall be applied to prepay indebtedness, it shall be applied to the installments thereafter falling due in the inverse order of their maturities. In case of replacement, the Buyer will cause any such new or used equipment to be marked as above provided in this Section 5. Any and all such replacement of Equipment, or any of it, and any and all additions to the Equipment, whether made pursuant to the Agreement dated January 20, 1972 between Seller and Buyer or otherwise, shall constitute accessions to the Equipment, and shall be subject to all of the terms and conditions of this agreement as though part of the original Equipment delivered hereunder, and included in the word "Equipment", as used in this agreement. Title to all such

new or used Equipment and improvements shall be taken initially, and shall remain, in the name of the Seller (or, if this agreement shall have been assigned, in the name or names of the assignee or assignees as the case may be), subject to the provisions hereof.

Except as above provided, the Buyer will not allow the name of any person, association or corporation to be placed on the Equipment or any replacements thereof, as a designation that might be interpreted as a claim of ownership thereof; provided that the Buyer may cause the Equipment to be lettered "CHICAGO AND NORTH WESTERN" or "C.N.W.", and may label the Equipment with the emblem, trademark, or slogan of Buyer, or in some other appropriate manner for the convenience of identification of the Buyer's interest therein.

When, and only when, the Buyer has paid the full purchase price for the Equipment, together with interest and any and all other payments as herein provided, and all of the Buyer's covenants and conditions herein contained have been performed by it, title to and property in all of the Equipment shall pass to and vest in the Buyer without further transfer or act on the part of the Seller, except that the Seller shall, upon request of the Buyer, execute and deliver to the Buyer a bill or bills of sale of all of said Equipment, transferring the title to and property in said Equipment to the Buyer free and clear of all liens and encumbrances created or retained hereby and shall execute for record or for filing in the public offices such instrument or instruments in writing as may be necessary or

appropriate in order then to make clear upon the public records, the title of the Buyer to all of said Equipment; provided, however, that if the Seller shall have assigned its interest in and to said Equipment and its rights hereunder pursuant to Section 12 hereof, such assignee of the Seller shall execute and deliver to the Buyer a bill of sale conveying said Equipment to the Buyer and warranting the same but only against the acts and deeds of such assignee.

6. Taxes.

All payments to be made by the Buyer hereunder shall be free of expenses to the Seller for collection or other charges, and of the amount of any State or Federal taxes (other than State and Federal Income Taxes) hereafter levied or imposed directly upon this agreement and/or any sale, payment, shipment or delivery under the terms hereof, all of which expenses and taxes the Buyer assumes and agrees to pay in addition to the above mentioned purchase price of said Equipment. The Buyer shall also pay promptly all taxes and assessments which may be imposed upon the Equipment or the earnings arising therefrom or the operation thereof, or upon the Seller by reason of its ownership or sale thereof by any jurisdiction in which the Equipment is operated by the Buyer, and agrees to keep at all times all and every part of the Equipment free and clear of all taxes, assessments, liens and encumbrances.

7. Compliance with Laws, Rules and Regulations.

The Buyer covenants that the Equipment will at all times be maintained, used and operated under and in compliance with all laws and

regulations in any jurisdiction to which the Equipment may be subject. The Buyer further covenants that it will comply in all respects with all acts of Congress and with the laws of the United States and of the various States and of the Dominion of Canada, and the provinces thereof, into which its operations involving the Equipment may extend during the term of this agreement and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any of the Equipment and in the event that said laws or rules require the alteration of any of the Equipment, the Buyer agrees to conform therewith, at its expense, and to maintain the same in proper condition for operation under such laws and rules during the life of this agreement; provided, however, that the Buyer may in good faith contest, in any reasonable manner, the application of any such law or rule which does not, in the judgment of the Seller, affect or threaten the Seller's title in and to the Equipment.

8. Maintenance and Insurance.

The Buyer further agrees to maintain and keep said Equipment in good order and repair at all times at its expense, and shall bear the risk, and shall not be released from its obligations hereunder, in case of any and all damage, loss or destruction of said Equipment from whatsoever cause arising.

The Buyer agrees to keep said Equipment insured at its own expense against loss or damage by fire and against other loss or damage, the risk of which is customarily insured against by the railroad companies, in such manner and in such proportion of the value thereof as is customarily insured by railroad companies. All such insurance shall be payable to the Seller and to the Buyer as their interests may appear.

9. Reports and Inspection.

The Buyer hereby agrees to furnish to the Seller, if requested, once in every year as long as this agreement shall be in force, an accurate inventory of the Equipment in actual service, and the numbers and the description of such Equipment as may have been lost or destroyed during the preceding calendar year. In addition thereto, the Buyer agrees to furnish to the Seller, if requested, once in every year as long as this agreement shall remain in force, a report of inspection by a competent disinterested party, satisfactory to the Seller, certifying that said Equipment has been maintained, is in good order and repair, and is properly numbered and marked pursuant to Section 5 hereof.

The Buyer shall promptly and fully inform the Seller of any loss or destruction of any of the Equipment and of any substantial repairs made or being made upon it or any of it. If required by Seller, the Buyer shall furnish to the Seller, a report of a competent disinterested party, satisfactory to the Seller covering the nature and extent of any damage to the Equipment, and as to the satisfactory repair thereof.

The Seller shall have the right, but shall be under no obligation to inspect the Equipment at any reasonable time or times during the continuance of this agreement. The Buyer agrees, insofar as it may legally do so, to supply free transportation over its lines to

designated agents of the Seller for the purpose of enabling such agents to reach the point or points where the Equipment is in operation, for the purpose of making such inspection or of assisting and instructing the employees of the Buyer in the proper operation and maintenance of said Equipment. The Buyer agrees to comply with any suggestions or recommendations of the Seller in any case affecting the repair of, or new parts for, the Equipment.

10. Prohibition Against Liens.

The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party by, through or under the Buyer, its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the Equipment or any of it, superior to the title of the Seller therein, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the Equipment.

11. Indemnities and Warranties.

The Buyer hereby agrees to save, indemnify and keep harmless the Seller from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of or in connection with the Equipment or the use or operation thereof. Said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the coveyance of the Equipment, as provided in

Section 5 hereof. The Buyer will bear the risk, and shall not be released from its obligations hereunder in the event of any defect in or damage to, or destruction or loss of, any or all of the Equipment.

The Buyer, having selected the type of Equipment, the accessories thereto, and the manufacturers thereof, does hereby agree to save, indemnify and keep harmless the Seller from and against any and all royalties, damages, claims, suits, judgments and costs that may arise from the use of any patented article on the Equipment at any time.

SELLER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE EQUIPMENT, AND THE SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR AS TO THE TITLE TO THE EQUIPMENT OR ANY UNIT OR COMPONENT THEREOF OR ANY OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE EQUIPMENT, it being agreed, however, that the Seller, at the request of the Buyer, will execute and deliver to the Buyer assignments of any claims which Seller may at any time have against the Manufacturer by reason of any defect in the Equipment or any unit or component thereof.

12. Assignment by the Seller.

All or any of the rights of the Seller under this agreement, including the right to receive the payments herein provided to be made by the Buyer, may be assigned by the Seller and re-assigned by any

assignee at any time and from time to time; provided, however, that no such assignment shall subject any assignee to any obligation as to the construction, delivery or warranty, if any, of the Equipment, or any other duty, obligation or liability hereunder, if any, except the duty to execute necessary and proper instruments of transfer or assignment of claims as and when the Buyer shall be entitled thereto pursuant to the provisions of Sections 5 and 11 hereof.

Upon any such assignment the assignor shall give written notice to the Buyer, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Seller's rights, title and interest in and to the Equipment and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Buyer of the notification of any such assignment, all payments thereafter to be made by the Buyer hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any such sale, transfer or assignment, or successive sales, transfers or assignments by the Seller, of title to any of the Equipment and of the Seller's rights hereunder in respect thereof, the Buyer shall, whenever requested by such

vendee, transferee or assignee, change the name markings on both sides of each unit of the Equipment so as to indicate the title of such vendee, transferee or assignee to such Equipment and its succession to the rights of the Seller hereunder, such markings as shall be specified by said vendee, transferee or assignee. The cost of painting the first series of such substituted markings shall be borne by the Buyer. The cost of painting such markings in connection with any subsequent assignment shall be borne by such subsequent vendee, transferee or assignee.

The term "Seller" whenever used in this agreement means, before any assignment of all or any rights of the Seller hereunder as hereinbefore provided in this Section 12, Harris Trust and Savings Bank, and after any such assignment the assignee or assignees for the time being of all of the Seller's rights hereunder.

13. Assignments by the Buyer.

The Buyer agrees it will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Seller. An assignment or transfer to a railroad company or other purchaser which shall

acquire all or substantially all the lines of railroad and railroad equipment of the Buyer and which, by execution of an appropriate instrument satisfactory to the Seller, shall assume and agree to perform each and all of the obligations and covenants of the Buyer hereunder, or an assignment by the Buyer to one of its wholly owned subsidiary companies, shall not be deemed a breach of this covenant provided that after giving effect to such assumption or assignment there shall not otherwise exist an event of default under this agreement. Furthermore, said railroad company, purchaser or assignee shall execute and deliver to the Seller all instruments and documents requested by it or its counsel to secure its rights under this agreement and collateral security provided thereby. Notwithstanding such assumption or assignment, the Buyer shall remain liable hereunder and shall be bound by the terms and conditions of this Conditional Sale Agreement which shall then be and become the joint and several obligation of the Buyer and such railroad company, purchaser or assignee.

The Buyer agrees that it will not pledge, hypothecate, or in any manner encumber, or permit the encumbrance of, said Equipment or any part thereof.

14. Defaults and Acceleration.

In the Event that any one or more of the following events of default shall occur, to-wit:

- a. The Buyer shall fail to pay in full when due any installment of purchase price or of interest thereon at the time and in the manner hereinbefore contracted to be paid as provided in Section 2 hereof; or
- b. The Buyer shall fail or refuse to comply with any covenant, agreement, term or provision of this agreement on its part to be kept and performed; or
- c. If a proceeding in reorganization, bankruptcy or insolvency be instituted by or against the Buyer or its property and the Debtor in reorganization or any trustee or receiver appointed therein fails to adopt and become bound by this agreement within sixty days after such appointment or designation.

then, at any time after the occurrence of such an event of default, the Seller may, without further notice or demand except to the extent necessary in order to comply with any legal requirement then in force and applicable to such action by the Seller, declare the entire unpaid balance of said purchase price, together with the unpaid interest

thereon, whether the same shall then have fallen due or not, immediately due and payable without further demand, and thereafter the entire sum shall carry interest at the rate of 7% per annum upon any portion thereof then overdue, from the date of such default.

The Seller may at its election (and, if before sale or before full performance of this agreement all costs and expenses of the Seller incidental to any such default and to the enforcement by the Seller of the provisions hereof, and all sums which shall then have become due and payable by the buyer hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this section as aforesaid, shall have been paid by the Buyer, and all other existing defaults shall have been remedied, or provision therefor satisfactory to the Seller shall have been made, then and in every such case the Seller shall) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration or termination had been made; but no such waiver, rescission or annulment shall limit or affect the Seller's right, upon any other default, or impair any rights or remedies consequent thereon.

15. Remedies.

If the Buyer shall make default as hereinabove provided, then at any time thereafter during the continuance of such default, the Seller may, without further notice or demand except to the extent necessary in order to comply with any legal requirements, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any of it and/or any replacements and improvements, and all present and future attachments and accessories thereof, without liability to return to the Buyer any sums theretofore paid, and free from all claims whatsoever except as hereinafter in this Section 15 expressly provided, and may remove the same from the use and possession of the Buyer and for such purpose may enter upon the Buyer's premises where the Equipment may be located, and may use and employ in connection with such removal, at the expense of the Buyer, any supplies, services and aids, and any available trackage and other facilities or means of the Buyer, without process of law; and the Buyer shall deliver the Equipment, or any of it, with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places on its railroad as the Seller may reasonably designate and for such purpose move or draw the Equipment in the usual manner and at the customary speed of trains, and in case of such retaking or delivery the Seller shall have the right to store the same upon the

premises of the Buyer without charge until the Seller shall desire to remove the same therefrom. And it is hereby expressly agreed by the Buyer that performance of this agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, the Seller shall be entitled to a decree against the Buyer requiring specific performance hereof.

If the Buyer shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Seller with or without retaking possession thereof may sell the Equipment, or any of it, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Buyer, or of any other party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, all subject to and in compliance with any legal requirements then in force and applicable to such sale. To the extent permitted by any such legal requirements, any sale or sales hereunder may be held or conducted at Chicago, Illinois at such time or times as the Seller may fix (unless the Seller shall, as so permitted, specify a different place or places, in which case the sale or sales shall

be held at such place or places and at such time or times as the Seller may specify), in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine in compliance with any such legal requirements, provided that the Buyer shall be given written notice of such sale at least ten (10) days prior thereto, by telegram or registered mail addressed to the Buyer at Chicago, Illinois, or such other notice, if any, as may be necessary to comply with any such legal requirements. If such sale shall be a private sale permitted by such legal requirements it shall be subject to the right of the Buyer to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Seller may itself bid for and become the purchaser of the Equipment or any of it so offered for sale without accountability to the Buyer (except to the extent of surplus money received as herein-after provided in the last paragraph of this Section 15), and in payment of such purchase price the Seller shall be entitled to the extent

aforesaid to have credited on account thereof all dums due to the Seller by the Buyer hereunder.

Each and every power or remedy hereby specifically given to the Seller shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy, and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default, or any acquiescence therein.

If the Seller shall exercise any of the powers or remedies conferred upon it hereunder, the Buyer shall have the right, after all sums due hereunder to the Seller shall have been received by it in full, including its proper costs and expenses incident to the collection thereof, to require title to the Equipment, if not previously sold or otherwise disposed of by the Seller pursuant to the

provisions hereof, to be transferred and assigned by the Seller to the Buyer free from any further liabilities or obligations to the Seller. If, after payment of all proper costs and expenses of the Seller incurred in the enforcement of its remedies hereunder and after applying all remaining sums of money realized by the Seller under the remedies herein provided, there shall remain any amount due to it under the provisions of this agreement, the Buyer shall pay the amount of such deficit to the Seller on demand. If, after payment of said costs and expenses and after applying as aforesaid all remaining sums realized by the Seller there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Buyer.

16. Applicable State Laws.

Any provision of this agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this agreement. Where, however, the conflicting provisions of any applicable State law may be waived they are hereby waived by the Buyer to the full extent permitted by law, to the end that this agreement shall be deemed to be a conditional sale and enforced as such.

17. Extension Not a Waiver.

Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this agreement, whether that extension

be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor any of its rights and remedies hereunder or otherwise existing.

18. Recording.

The Buyer shall cause this agreement to be filed, registered and recorded wherever required for the proper protection, to the satisfaction of counsel for the Seller, of the Seller's title to the Equipment and any replacement or replacements, and its rights under this agreement; and the Buyer shall from time to time do and perform any other act, and will execute, acknowledge, deliver, file, register and record any and all further instruments, required by law or reasonably requested by the Seller for the purpose of such protection of its title and rights, or for the purpose of carrying out the intention of this agreement.

19. Payment of Expenses.

The Buyer shall pay all costs, charges and expenses, except the counsel fees of Seller, incident to the preparation, execution, acknowledgment, filing, registering and recording of this agreement and of the first assignment or assignments by the Seller of title to the Equipment, and of any instrument supplemental hereto or amendatory hereof.

20. Execution of Counterparts.

This agreement may be simultaneously executed in two or more counterparts, each of which so executed shall be deemed to be

an original, and such counterparts, together, shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

21. Section Headings.

All section, paragraph or division headings are inserted for convenience only and shall not affect any construction or interpretation of this agreement.

22. Modification of Agreement.

This agreement of conditional sale constitutes the entire agreement between the Buyer and the Seller with respect to the sale of the Equipment herein referred to. No variation or modification of this agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by duly authorized officers of the Buyer and the Seller.

23. Possession and Use of the Equipment by the Buyer.

The Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof, but only upon and subject to all terms and conditions of this Agreement, upon the lines of railroad owned or operated by the Buyer either alone or jointly with another and whether under lease or otherwise, and upon the lines of railroad owned or operated by any railroad company controlled by or under common control with the Buyer, or over which the Buyer has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic.

24. Law Governing.

The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, Harris Trust and Savings Bank and Chicago and North Western Railway Company, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be affixed hereto and duly attested, all as of the day and year first above written.

HARRIS TRUST AND SAVINGS BANK,

By Frederic S. Webber
Vice President

ATTEST:

ps mason
Assistant Secretary

CHICAGO AND NORTH WESTERN RAILWAY
COMPANY,

By M. B. Little
Vice President

ATTEST:

D. L. Vargason
Assistant Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 24TH day of JANUARY, 1972, before me personally appeared FREDERIC L. WEBBER, to me personally known, who being by me duly sworn, says that he is a Vice-President of Harris Trust and Savings Bank, that the seal affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Francis A. Auer
Notary Public, Cook County

My Commission expires MY COMMISSION EXPIRES AUGUST 23, 1974

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 24th day of January, 1972, before me personally appeared J M Butler, to me personally known, who being by me duly sworn, says that he is a Vice-President of Chicago and North Western Railway Company, that the seal affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Albert R. Zuspahn
Notary Public, Cook County

My Commission expires August 22, 1973

ALBERT R. ZUSPANN
Notary Public
Cook Co. Illinois
My Commission Expires August 22, 1973

SCHEDULE A

18 DIESEL LOCOMOTIVES 1500 H.P. F-7 TYPE
Manufactured by General Motors Corporation
Electro-Motive Division

C&NW NO.

245
246
247
248
249
250
251
252
253

C&NW NO.

254
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